REMARKS

Claims 1-38 are pending in the Application. Claim 38 has been added. No new matter has been added. Entry of the amendment is respectfully requested. Reconsideration is respectfully requested.

Claim Status

Claims 16, 20-22, and 26-28 were rejected as anticipated by Doig (US 6,390,367).

Claims 1-12, 15, 17-18, 29-31, 33, and 34 were rejected as obvious over Doig in view of Dominguez (US 4,971,077).

Claims 13, 19, 23, 32, and 35-37 were indicated allowable if rewritten in an independent form. The indication of allowable subject matter is greatly appreciated.

Claim Amendments

Claims 19, 23, 32, and 35-37 have been placed in an independent form, as requested. Claims 16 and 26 have been amended to recite language indicated allowable in claim 19. Therefore, it is respectfully submitted that claims 16-37 are now allowable.

Support for claim 38 may be found at specification page 29, lines 10-17, and original claim 28.

The Rejection of Claim 1 (and claims depending thereon)

The Applicants respectfully traverse the rejections. As shown in more detail hereinafter, neither Doing nor Dominguez, taken alone or in combination, disclose or suggest the features and relationships that are specifically recited in claim 1.

Claim 1

Claim 1 recites a "radiation emitting device" and a "radiation sensing device" adjacent a card reader slot. The Action admits that Doig does not teach a light sensor, but rather a sole capacitive sensor (40). Dominguez is directed to moving tobacco, and is non analogous to an automated banking machine. Regardless, Dominguez (col. 3, lines 45-55) likewise teaches a sole sensor (22). Tobacco height sensor (22) appears to sense the presence of light in tube (18). Even if it were somehow possible (which it isn't) to have substituted Doig's capacitive sensor with Dominguez's height sensor as alleged, the resulting modified Doig would still lack an emitting device and a sensing device. The Office has not established a *prima facie* case of obviousness.

Furthermore, Doig explicitly teaches away from using an emitter and receiver arrangement. Doing teaches that "An advantage of this . . . invention is that the proximity sensor provides a *self-contained* detection system. That is, the operation of the proximity sensor does not rely on . . . a signal from a co-operating device . . . the sensor does *not* detect a signal from an *emitter*" (col. 2, lines 1-7). Thus, it would not have been obvious to have modified Doig to have included an emitting device and a sensing device.

Additionally, the Office has not explained how the structure of Doig could be modified to have produced the recited invention. Doig requires that the fascia (12) be curved in front of a sensor to permit sensing. However, Doig's fascia (12) is only curved on one side of the card reader slot (26). The lack of a second curvature in Doig's structure prevents the use of another sensor. The structure of Doig not only teaches away from having sensors, but it also requires that the single sensor (40) be set at a specific angle to sense the specific (circled) area (Figure 2). Doig's sensor angle is not conducive to an emitter and receiver sensor arrangement. It is unclear how Doig's sensor angle could permit use of an emitter and receiver sensor arrangement.

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Such modification to Doig would destroy the desired and disclosed structure and utility of the Doig teaching. However, an obviousness rejection cannot be based on a modification that would result (which is the current situation) in destroying the utility of the device shown in the prior art reference. *In re Fine*, 5 USPQ2d 1598-99 (Fed. Cir. 1988).

The attempt to combine the teachings of the references is clearly an attempt at hindsight reconstruction of the claimed invention, which is legally impermissible and does not constitute a valid basis for a finding of obviousness. *In re Fritch*, 22 USPQ2d 1780 (Fed. Cir. 1992). The rejection, which lacks the necessary evidence and rationale, is based on knowledge gleaned only from Applicants' disclosure.

Claim 38

The references do not teach or suggest requesting a user of an automated banking machine to provide information on the appearance of the user interface, and using the information in determining whether an unauthorized object is adjacent the user interface.

Claims dependent on claim 1

The indication of allowable subject matter in claim 13 is noted.

Each of the dependent claims depends directly or indirectly from independent claim 1. Independent claim 1 has previously been shown to be allowable. "If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious" (MPEP 2143.03). *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). Thus, it is asserted that the dependent claims are allowable on the same basis.

Furthermore, each of the dependent claims additionally recites specific features and relationships that patentably distinguish the claimed invention over the applied art. None of the

references, taken alone or in combination, discloses or suggests the features and relationships that are specifically recited in the dependent claims. Thus, it is respectfully submitted that the dependent claims are further allowable due to the recitation of such additional features and relationships.

Fees For Additional Claims

Please charge the fee associated with the submission of seven additional independent claims and one additional total claim and any other fee due to Deposit Account 09-0428.

Conclusion

Each of Applicants' pending claims specifically recites features and relationships that are neither disclosed nor suggested in the applied prior art. Furthermore, the applied prior art is devoid of any such teaching, suggestion, or motivation of features so as to produce Applicants' invention. Allowance of all of Applicants' pending claims is therefore respectfully requested.

The undersigned will be happy to discuss any aspect of the Application by telephone at the Office's convenience.

Respectfully submitted,

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